

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

ACADIA INSURANCE COMPANY, as
Subrogee of St. Paul Street, LLC

Plaintiff

v.

NER CONSTRUCTION MGMT. , INC.

Defendant

CIVIL ACTION NO.
04-12557-WGY

JURY TRIAL DEMANDED

AFFIDAVIT OF PATRICK J. LOFTUS, III, ESQUIRE
SHOWING CAUSE FOR NOT FILING A DEFAULT MOTION

I, PATRICK J. LOFTUS, III., being a competent adult, hereby states the following under the penalties of perjury:

1. I am the attorney for Plaintiff in the above-captioned case and I am personally responsible for the care and management of this matter and, accordingly, I am fully familiar with the facts and circumstances of this case.

2. This action involves a claim for property damage suffered as a result of a fire that occurred at plaintiff's insured's premises on January 31, 2004. The fire ignited flammable materials which were being stored by defendant NER in the basement, without the permission of Plaintiff's insured, and quickly spread throughout the Property.

3. A Summons and Complaint was filed on December 7, 2004.

4. Defendant was properly served with the Summons and Complaint on December 10, 2004.

5. Shortly after the Complaint was served on defendant I received a telephone call from Teresa Huber, of RSUI Group, defendant's insurer, requesting an extension of time to answer the Complaint.

6. A thirty (30) day extension to answer the Complaint was given at that time.

7. Despite numerous attempts to contact Ms. Huber after the extension was granted, I did not receive any response.

8. On April 14, 2005 I received a telephone message from Ms. Huber in response to my previous calls without any information other than she was returning my call

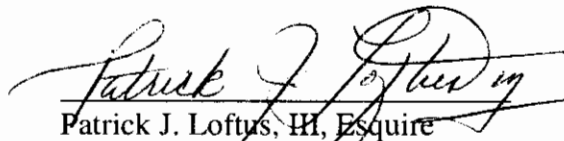
9. On April 19, 2005, Ms. Huber left me another message and stated the claim was still under review by RSUI.

10. On May 11, 2005, Ms. Huber left me a voice-mail message stating that RSUI was denying our claim against defendant and would be notifying defendant by certified mail.

11. As plaintiff had granted an extension of time to answer the Complaint as a courtesy, plaintiff had not filed its Motion for Default Judgment within the 30 days as required by the Standing Order entered on January 19, 2005.

12. Defendant NER, has not acted in good faith after receiving an extension, and therefore, plaintiff must now file its Motion for a Default Judgment.

Respectfully submitted,



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Date:

May 11, 2005

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